



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

Location
409 The Capitol

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DATE	COMM	ACTION
3/16/23	SM	Favorable
3/20/23	JU	Favorable
4/3/23	ED	Favorable
	RC	

March 16, 2023

The Honorable Kathleen Passidomo
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 4** – Senator Rouson
HB 6017 – Representative Chaney
Relief of Maria Garcia by the Pinellas County School Board
SPECIAL MASTER’S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM BILL FOR \$2.8 MILLION IN ACCORDANCE WITH A CONSENT JUDGMENT RENDERED BY THE CIRCUIT COURT. MARIA GARCIA SEEKS DAMAGES FROM THE PINELLAS COUNTY SCHOOL BOARD FOR PERSONAL INJURIES CAUSED BY THE NEGLIGENT OPERATION OF A SCHOOL BUS BY AN EMPLOYEE OF THE PINELLAS COUNTY SCHOOL BOARD.

FINDINGS OF FACT:

The Accident

Maria Garcia is a 45-year-old woman who suffered physical injuries on February 13, 2019, when she was struck in Pinellas County, Florida, by a bus operated by the Pinellas County School Board. At the time of the accident, Ms. Garcia was walking to work, and Patricia Gavin drove the bus within the scope of her employment with the Pinellas County School Board.¹

Ms. Garcia was in the crosswalk and had a “walk” signal when she was struck by the bus. Video footage from the bus shows the front of the bus strike Ms. Garcia. The rear wheels of the bus then ran her over as the bus turned.²

¹ Claimant’s Ex. 1, Crash Report; Claimant’s Ex. 10, Catastrophic Life Care Plan.

² Claimant’s Ex. 2, Video from the on-board camera of the school bus.

Damages

As a consequence of the accident, Maria Garcia has suffered damages in the form of current and anticipated medical expenses of \$1,707,479, lost wages of \$547,968, and at least \$744,553 due to pain and suffering. In brief, the total amount of \$3 million that Ms. Garcia seeks from the Pinellas County School Board is no more than necessary to compensate Ms. Garcia for her losses as a consequence of the accident.

Of the total amount sought and agreed to by Maria Garcia and the Pinellas County School Board, Pinellas County School Board has paid to Maria Garcia the \$200,000 statutory cap. Of this amount, \$50,000 was disbursed as attorney's fees and \$43,476.63 was disbursed to repay the costs associated with the claim and underlying litigation.³

The Pinellas County School Board has an excess insurance policy to pay claims in the rare occasion that the sovereign immunity cap does not apply and a Self-Insured Retention limit (deductible) of \$500,000. Although there are no known coverage defenses under the excess insurance policy, the carrier makes the final decision as to whether a claim is or is not covered under the policy.⁴

Medical Expenses

Maria Garcia has remaining medical bills totaling \$140,759.64. She also has an Optum Health Care lien of \$16,588.27 and a Medicaid Lien (c/o Conduent) totaling \$118,809.86.⁵ In sum, Ms. Garcia owes \$276,157.77 for direct medical expenses related to this injury.

The responding ambulance transported Ms. Garcia to Bayfront Hospital in St. Petersburg, where Ms. Garcia was treated for critical injuries, including, but not limited to:

- Blunt multisystem trauma with hemorrhagic shock;
- Internal bleeding with loss of 3/4 blood volume during the first 24 hours;
- A lacerated spleen with laparotomy;
- Multiple rib fractures;
- Pneumothoraxes (bilateral collapsed lung);

³ Claimant's Ex. 5, Closing Statement Update.

⁴ Claimant's Ex. 3, Insurance coverage disclosure.

⁵ Claimant's Ex. 4, Affidavit as to Costs and Fees.

- Gastronomy tube placement with tracheostomy and intubation;
- Multiple unstable pelvic ring fractures requiring surgical intervention;
- Bilateral fracture of acetabulum bones in the hip joints;
- Right thigh skin grafting hypertrophic scarring complicated with recurrent infection;
- Multiple transverse process and spinus process fractures in the lumbar spine;
- Loss of function in right arm due to nerve damage;
- A degloving injury to right thigh;
- Right knee injury to the posterior cruciate ligament and possibly anterior cruciate ligament; and
- A fractured left scapula.⁶

Ms. Garcia required emergency surgery to remove her lacerated spleen. She underwent emergency pelvic surgery, which involved open reduction and fixation of her pelvic fractures with two large screws driven into her sacroiliac joint. She required emergency surgery to save her leg. Her surgeon harvested an extensive amount of skin from her back, hip areas, and right buttock, and surgically grafted it where the skin was ripped off of her right upper leg (70 x 65 cm). Another “patch” was grafted below the knee (36 x 21 cm).⁷ Ms. Garcia remained in the hospital until April 27, 2019.

Ms. Garcia continues to experience ongoing pain affecting her bilateral neck and right upper extremity with associated numbness, tingling, and weakness. She is unable to do fine motor skills like buttoning clothing or writing. She is also unable to lift or reach overhead with her right arm. She reports “nerve damage” to her right arm and has lost dexterity. She also reports right mid and low back pain that radiates to the posterior aspect of the right leg, right knee pain, and right ankle and foot pain with intermittent swelling. Ms. Garcia reports throbbing pelvic pain, bilateral hip pain, pulsating headaches and migraines, left leg and foot pain with ambulation, left leg numbness, right shoulder pain, pain and itching at all the skin graft areas, and chest pain. Her pains

⁶ Claimant's Ex. 15, Medical Records; Claimant's Ex. 12, Deposition Testimonies of Jeffrey Johnson, MD, and Daniel Dziadosz, MD; Claimant's Ex. 10, Life Care Plan.

⁷ Claimant's Ex. 15, Medical Records; Claimant's Ex. 12, Deposition Testimonies of Jeffrey Johnson, MD, and Daniel Dziadosz, MD.

are constant and their severity range from 2/10 to 8/10 depending on her activities.⁸

As a result of her injuries, Ms. Garcia suffers from the following long term disabilities:

- Decreased ability to perform activities of daily living, e.g., bathing, toileting, dressing, and eating.
- Decreased locomotion.
- Decreased external mobility.
- Decreased ability to perform household services, e.g., inside housework, food cooking and clean-up, household management, shopping for the household, and obtaining services for the household.
- Decreased ability to participate in personal avocational activities, e.g., personal hobbies and pastimes.
- Decreased cognitive function affecting a loss of vocational capacities and opportunities.
- Decreased physical function affecting a loss of vocational capacities and opportunities.
- Decreased ability to interact or socialize with family, friends, or acquaintances.⁹

A life care plan, prepared for Claimant, based on a life expectancy of 43 more years, anticipates her future medical requirements to total \$1,431,321, as reduced to present value.¹⁰

Ms. Garcia's Future Medical Expenses¹¹	Amount
Physician Services	\$120,603
Routine Diagnostics	\$24,769
Medications	\$271,410
Laboratory Studies	\$10,352
Rehabilitation Services	\$166,166
Equipment & Supplies	\$1,666
Nursing & Attendant Care	\$599,229

⁸ Claimant's Ex. 10, Life Care Plan.

⁹ Claimant's Ex. 10, Life Care Plan at 67-68; Claimant's Ex. 12, Deposition Testimony of Gloria Cruz-Gomez, MD. The *Life Care Plan* was prepared by Dr. Gloydian Cruz-Gomez, a Physical Medicine & Rehabilitation specialist, who has practiced medicine in Florida since 2011. Dr. Cruz-Gomez is certified by the American Board of Physical Medicine & Rehabilitation, and the American Board of Pain Medicine. Dr. Cruz is also a Certified Life Care Planner, as designated by the International Commission on Health Care Certification.

¹⁰ Claimant's Ex. 11, Life Care Plan at 67-68; Claimant's Ex. 12, Deposition Testimony of Gloria Cruz, MD.

¹¹ Claimant's Ex. 11, Life Care Plan Present Value Assessment at 1; Claimant's Ex. 12, Deposition Testimony of Gloria Cruz, MD.

Acute Care Services	\$220,126
TOTAL	\$1,431,321

Lost Wages

Maria Garcia is unable to work as a result of her injuries.¹² At the time of the accident, she worked full-time, at least 40 hours per week, as a stocker in a thrift shop earning minimum wage of \$9 per hour. Ms. Garcia credibly testified that the injuries prevent her prior plans to open her own cleaning business.

Accounting for the increases in Florida's minimum wage law, and assuming Ms. Garcia would have continued to earn only minimum wage until she reached the age of 62, which is the age that social security benefits begin, the accident caused Ms. Garcia to lose approximately \$547,968 prior to retirement.

Loss of Enjoyment of Life; Pain and Suffering

Maria Garcia, her daughter, and her sister each credibly testified at the hearing regarding Ms. Garcia's quality of life before and after the accident.

Prior to the accident, Maria Garcia worked full time to provide for her daughters. She lived an active lifestyle and enjoyed physical fitness and spending time with her family. During the hearing, her daughter Claudia Pena testified that her mother Maria Garcia would often "out-gym" her in workouts before the crash. Her daughter went on to testify that the daughter has become the sole financial support for the family now that her mother can no longer work.

Since the collision, Maria Garcia has frequent daily pain. She can no longer walk normally or without pain. Ms. Garcia's right arm never recovered after she left the hospital; it constantly goes numb and she has no finger dexterity. She has limited use of her right arm and hand. The grip strength in her right hand is gone, and she drops things often. She had to use her left arm to prop up her right arm in order to be sworn in for testimony at the hearing.

She is limited to standing for about fifteen to twenty minutes before needing to sit. She uses a cane when she walks. When she goes to the grocery store, she uses a walker or a scooter.

¹² Testimonies of Claudia Pena, Claudia Kaluzinski, and Maria Garcia.

In addition, she periodically suffers anxiety and depression resulting from this crash.

Maria Garcia cannot lift pots and pans or stay on her feet long enough to cook. She tries to give her daughters instructions on how to cook, but her brain injuries often prevent her from remembering the right ingredients or sequences for preparing food.

The skin grafts Ms. Garcia received have caused her constant problems. They have become infected several times, and she has had to return to the emergency room to have them treated. On September 24, 2020, she was admitted to a local hospital (Mease Countryside) because one of the grafts had cellulitis. Aside from the recurring infections, the grafts are itchy, expansive, and conspicuous.¹³

LITIGATION HISTORY:

Litigation and Settlement

On December 30, 2019, Maria Garcia filed a complaint in the Sixth Judicial Circuit, in and for Pinellas County, against the Pinellas County School Board. On May 16, 2022, the parties agreed to a consent judgment in the amount of \$3,000,000.¹⁴

On January 27, 2023, a half-day hearing was held before the House and Senate special masters. Maria Garcia submitted fifteen exhibits for consideration. With the exception of Exhibit 9, verdict research, which was not provided prior to the hearing, the exhibits were received without specific objection by Pinellas County School Board. Pinellas County School Board objected to the relevance of, and the prejudice caused by the surprise of, the verdict research information. The verdict research may be considered by the special masters in this claim bill hearing and has been considered in this report to the same extent as any other information available through independent knowledge and research.

Video deposition testimonies of Maria Garcia's trauma surgeon, Dr. Jeffrey Johnson, and her life care planner, Dr. Gloydian Cruz, were played at the hearing. Dr. Johnson, a retired Air Force Colonel with tours in Iraq and Afghanistan as a combat surgeon, stated that Ms. Garcia was "in the sick or sickest category" of trauma patients.

¹³ Claimant's Ex. 14, Photographs and Videos; Claimant's Ex. 15.d., Medical Records from Mease Countryside Hospital.

¹⁴ Claimant's Ex. 13, Pleadings.

Maria Garcia, her daughter Claudia Pena, and her sister Claudia Kaluzinski testified at the hearing regarding Ms. Garcia's injuries, her quality of life before the accident, and her decreased quality of life after the accident.

The Pinellas County School Board did not present any evidence at the hearing or take a position with regard to the relief sought through the claim bill for Maria Garcia.

CONCLUSIONS OF LAW:

A *de novo* hearing was held as the Legislature is not bound by settlements or jury verdicts when considering a claim bill, passage of which is an act of legislative grace.

Section 768.28, Florida Statutes, waives sovereign immunity for tort liability up to \$200,000 per person and \$300,000 for all claims or judgments arising out of the same incident. Sums exceeding this amount are payable by the State and its agencies or subdivisions by further act of the Legislature.

In this matter, Maria Garcia alleges Patricia Gavin, who drove the bus for the Pinellas County School Board that injured Ms. Garcia, was negligent. The Pinellas County School Board is liable for a negligent act committed by an employee acting within the scope of employment. Ms. Gavin was transporting students to school within the scope of her employment with Pinellas County School Board. Thus, if Ms. Gavin was negligent when the bus struck Ms. Garcia, Ms. Gavin's negligence is imputed to the Pinellas County School Board.

After completing its investigation, the Florida Highway Patrol cited Gavin under section 316.130(15), Florida Statutes, "Failed to Use Due Care Toward Pedestrian."¹⁵ The Pinellas County School Board admitted liability and also agreed to a judgment entered in favor of Ms. Garcia and against the Pinellas County School Board in the sum of \$3 million.¹⁶

No evidence suggests that Ms. Garcia failed to exercise due care with regard to the accident.

Negligence

¹⁵ Claimant's Ex. 1, Crash Report.

¹⁶ Claimant's Ex. 13, Defendant Stipulation on Liability, and Consent Judgment.

There are four elements to a negligence claim: (1) duty—where the defendant has a legal obligation to protect others against unreasonable risks; (2) breach—which occurs when the defendant has failed to conform to the required standard of conduct; (3) causation—where the defendant's conduct is foreseeably and substantially the cause of the resulting damages; and (4) damages—actual harm.¹⁷

Duty

A motorist has a duty to exercise ordinary, reasonable, and due care towards a pedestrian.¹⁸

Breach

The video footage shows the bus approaching an intersection in the rain. The intersection was well-maintained with bright traffic lights and clearly-marked crosswalks. Maria Garcia was crossing the street, pursuant to her “walk” signal, ahead of the bus and traveling in the same direction as the bus was traveling prior to the bus making the turn.

Though the light was green, the bus driver should have ensured that no pedestrians were in the crosswalk before continuing through the turn. Ms. Gavin, and therefore the Pinellas County School Board, breached its duty of care toward Maria Garcia.

Causation

Ms. Gavin's failure to exercise due care directly caused the school bus to strike Maria Garcia in the crosswalk and the wheels of the school bus to drive over Ms. Garcia's body. It is foreseeable that driving over a pedestrian with a school bus would subject a survivor to the medical expenses, lost wages, and pain and suffering experienced by Ms. Garcia.

Damages

The Standard Jury instruction for personal injury guides the determination of damages for non-economic loss and includes “any bodily injury sustained by [name] and any resulting pain and suffering, disability or physical impairment, disfigurement, mental anguish, inconvenience or loss of

¹⁷ *Williams v. Davis*, 974 So.2d 1052, at 1056–1057 (Fla. 2007).

¹⁸ *Greiper v. Coburn*, 190 So. 902 (Fla. 1939).

capacity for the enjoyment of life experienced in the past, or to be experienced in the future. There is no exact standard for measuring such damage. The amount should be fair and just, in the light of the evidence.”¹⁹

The evidence presented at the hearing established that, as a direct consequence of the accident, Maria Garcia suffered damages in the form of current and anticipated medical expenses of \$1,707,479, lost wages of \$547,968, and at least \$744,553 due to pain and suffering, which totals \$3 million.

Pinellas County School Board agreed to the consent judgment of \$3 million against the Pinellas County School Board. This amount is conservative in comparison with other jury verdicts that have considered similar injuries. The amount is reasonable in light of Ms. Garcia’s past and present injuries, her persistent pain and scarring, and her continuing disabilities as reported through the testimony at the hearing and the testimony and documentary evidence prepared by Gloria Cruz-Gomez, MD.

ATTORNEY FEES:

Language in the bill states attorney fees may not exceed 25 percent of the amount awarded. Counsel for Maria Garcia indicates attorney fees will be 25 percent, and lobbying fees will amount to 8 percent, of the total funds awarded through the claim bill.²⁰ It appears from the affidavit of costs and fees submitted by counsel for Maria Garcia that the lobbying fees are in addition to the attorney fees.

RECOMMENDATIONS:

Based upon the information provided before, during, and after the special master hearing, the undersigned finds that Maria Garcia has demonstrated negligence on behalf of the Pinellas County School Board, and that the amount sought is reasonable. Based upon the foregoing, the undersigned recommends that SB 4 be reported FAVORABLY.

¹⁹ Fla. Std. Jury Instr. (Civ.) 501.3d, *Injury, pain, disability, disfigurement, loss of capacity for enjoyment of life.*

²⁰ Claimant’s Ex. 4, Affidavit as to Costs and Fees.

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Respectfully submitted,

Alex Brick
Senate Special Master

cc: Secretary of the Senate